



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MNP - 174686

PRELIMINARY RECITALS

Pursuant to a petition filed on May 24, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability regarding Medical Assistance (MA), a hearing was held on July 11, 2016, by telephone. The record was left open for two weeks at the petitioner's request.

The issue for determination is whether the department correctly denied payment of the petitioner's active pharmaceutical ingredients.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]

Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Dunn County.

2. The petitioner seeks payment for various bulk powders, which are also known as active pharmaceutical ingredients, so she could compound them into prescription medications. The department denied payment because the ingredients are not covered by the Wisconsin Medical Assistance Program.
3. The petitioner seeks reimbursement for the following active pharmaceutical ingredients:
 - a. Raniditidine HCL powder
 - b. Quercetin dehydrate powder
 - c. Loratadine powder
 - d. Montelukast sodium powder
 - e. Bloodroot powder
4. None of the ingredients requested by the petitioner are included in the department's list of covered ingredients.
5. The petitioner's pharmaceutical provider has not submitted a prior authorization request for the ingredients.

DISCUSSION

The petitioner is a disabled women who requires a number of prescription drugs. She contends that she cannot take regular medications because she is allergic to all preservatives. Whether this is true, I do not know because her file contains no medical documentation. But that does not matter for this hearing. What matters is that she seeks reimbursement for bulk supplies of active pharmaceutical ingredients (APIs) so that she can compound her own medications. The department denied the request because none of the requested ingredients is on the current list of Medicaid-covered APIs.

Because these are prescription drugs, they are considered "legend" drugs. Wis. Admin. Code, § DHS 101.03(94). Federal law generally allows state medical assistance programs to cover legend or prescription drugs only if the drug's manufacturer enters into a rebate agreement with the federal government. 42 USC § 1396r-8(a). Wisconsin will pay for these drugs under limited circumstances if the recipient first obtains prior authorization. To obtain prior authorization, the provider must prove that "no other drug sold by a manufacturer who complies with 42 USC 1396r-8 is medically appropriate and cost-effective in treating the recipient's condition." Wis. Admin. Code, § DHS 107.10(2)(e).

None of the APIs requested by the petitioner are covered by a rebate agreement. As a result, they are not included in the department's list of approved APIs. *See ForwardHealth Update #2014-08, Attachment 2*. Nor has the petitioner submitted a prior authorization request for bulk powders. Because she has not met the criteria necessary for coverage of these drugs, the department correctly refused to pay for them.

I note that this is the second time that the petitioner has sought payment of drugs that require prior authorization without submitting such an authorization. At the latest hearing, she contended that the department improperly denied her request for drugs last year. I reviewed that decision. *See DHA Decision No. MNP/170124*. She had demanded that the medical assistance program pay for any preservative-free drug she believed she needed without having to make a specific request for each particular drug. I pointed out then that this is not possible because medical assistance has different standards for approving different drugs. But the decision notes that each time I tried to explain this to her, she replied that she needed all of her drugs to be preservative-free and she would need these for the rest of her life. I then pointed out that this may be true, but I do not have the authority to change the medical assistance program's rules. This remains true. She may need the drugs she requests, but until she begins following the program's rules, medical assistance will not pay for them.

CONCLUSIONS OF LAW

The petitioner is not entitled to medical assistance reimbursement for the bulk powders listed in *Finding of Fact No. 3* because they are not on the department's approved drug list.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 4th day of August, 2016

\s _____
Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 4, 2016.

Division of Health Care Access and Accountability